

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.217 OF 2019

Sushilabai Nivrutti Hase & another

Petitioners

Versus

Dattu Laxman Hase

Respondent

Mr.V.Y.Bhide, advocate for the petitioners

Mr.A.N.Nagargoje, advocate for Respondent-sole.

CORAM : AVINASH G. GHAROTE, J.

DATE : 02nd August, 2021.

PC :

1 The impugned order, rejects the application for joint measurement of the suit property on the ground, that the property was measured at earlier point of time, before institution of the suit and, therefore, it was the burden upon the plaintiffs to have proved the document as per law. When the surveyor was examined in the year 2018, in his cross-examination, for the first time, he admitted that before conducting the measurement, no notice was issued to the other side, which brought credibility of the entire measurement in question. The learned trial Court, on account of the fact that there was earlier measurement, rejected the joint application for measurement.

2 It is not in dispute that the defendant has also filed a counter claim in respect of the same subject property. It is a settled

position of law that in a case of encroachment, the joint measurement, by a Commissioner to be appointed by the Court, would be the ideal situation where the controversy could be finally put to rest.

3 In that view of the matter, the impugned order is hereby quashed and set aside. The application at Exhibit-106 is allowed. The Deputy Superintendent of Land Records is hereby appointed as Court Commissioner who will jointly measure the lands of the plaintiffs and the defendant and shall submit his report within a period of two months from today. The parties undertake to appear before the DSLR on 09th August, 2021. A net- downloaded copy of this order be placed before the trial Court as well as the DSLR to enable him to embark upon the activity of joint measurement. In view of the fact, that the suit is of the year 2010, the petitioners/plaintiffs shall pay costs of Rs.5000/- (Rs. Five thousand) to the Respondent-defendant, to be deposited before the trial Court within a period of one week from today. The trial Court shall expedite the matter and shall decide it as early as possible.

4 The writ petition is accordingly disposed of.

(AVINASH G. GHAROTE)
JUDGE

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